

## REMARKS

Claims 1-4, 6-8, 11, 14, 17-19, and 21-26 are pending. Claims 7, 11, 19, 21-23, 25, and 26 are withdrawn from consideration. Applicants wish to thank the Office for indicating that the subject matter of claims 1-4, 6, 8, and 24 are allowable except for containing non-elected subject matter or depending from claims that contain non-elected subject matter. By way of this Amendment, claims 11, 17-19, and 21-23 have been amended, no claims have been added, and no claims have been canceled. No new matter has been added.

The sole remaining rejections in this application relate to claims either containing non-elected or restricted subject matter or depending from claims that contain non-elected or restricted subject matter. Applicants have previously requested rejoinder of the non-elected subject matter as specified in MPEP 803.02, and rejoinder of restricted subject matter under 37 CFR 1.141. Both requests were denied.

Request for Reconsideration of Restriction/Election Requirements

Applicants hereby request reconsideration of the pending election and restriction requirements.

With regard to the election of species, an election was made with traverse in response to the Office Action dated 24 October 2006. Traversal was made on the basis that the genus of claim 1 had not been shown to lack a special technical feature under PCT Rule 13.2. The genus of claim 1 is written in Markush format. When the Markush grouping is for alternatives of chemical compounds, they shall be regarded as being of a similar nature [i.e. special technical feature] where the following criteria are fulfilled: (a) all alternatives have a common property or activity, and (b)(1) a common structure is present. MPEP 1850(III)(B). As to (a), the compounds of claim 1 have a common activity as inhibitors of Cox-2 and, more particularly, utility in the treatment of inflammation, as noted in the previous Amendment. As to (b)(1), the compounds have the common structure (scaffold) of formula (I) shown in claim 1, and there has yet to be any cited art to show the scaffold not to be novel. Thus, the requirements for Unity have been met.

Applicants previous request for rejoinder of species was denied on the basis that Applicants merely allege that the treatment of all the numerous diseases are mediated by Cox-2 is a special technical feature. The diseases listed in the specification are not known to share a common mechanism or pathway. (Office Action, p.2)

Applicants note that the original request for rejoinder identified a common utility of the claimed compounds as treatment of inflammatory disorders (April 17, 2007 Amendment) and that the method of treatment claims were narrowly tailored to treatment of conditions supported either by the application or in the literature. The Office has ignored this particular statement of utility and has not addressed the narrowed claims. Instead the election has been maintained on the basis of diseases listed in the specification. In summary, the Office has erroneously required and maintained the instant election requirement without any pending prior art, without considering Applicants stated utility, and without reviewing the breadth of the pending claims. Applicants again request rejoinder as outlined in MPEP 803.02.

With regard to the restriction, an election was made with traverse in response to the Office Action dated 24 October 2006. Traversal was made on the basis that no references were cited as novelty destroying against the recited genus. The required restriction of compound (I) between Groups I, II, and III, was merely arbitrary, not supported by prior art, and was therefore not made in accordance with PCT 13.1 and 13.2. In such situations, rejoinder is available under 37 CFR 1.141 (MPEP 806.05(ii)), and such rejoinder was requested by Amendment of April 17, 2007.

The Office has declined to rejoin the restricted claims on the basis that Applicants have not limited claims to the elected products. As described above, the non-elected species have been wrongfully denied rejoinder, and it follows that maintenance of the restriction is solely based on maintenance of the erroneous election requirement. No other justification has been provided. Therefore, Applicants request reconsideration of the restriction requirement in conjunction with reconsideration of the election of species requirement.

#### Other matters

Claims 11, 17-19, and 21-23 have been amended to delete reference to Cox-2 activity in favor of reciting the condition or class of conditions to which the claims refer. Entry of the Amendment is respectfully requested.

#### Conclusion

The present Amendment is filed within the shortened two month period from the date of the action. Furthermore, Applicants assert that the instant Amendment places

PG4893USw

the application in a condition for allowance, or in the alternative, that its entry is appropriate as the instant amendments place the application in a better condition for appeal, as permitted by 37 CFR 1.116.

The Examiner is invited to contact the undersigned at (919) 483-8160, to discuss this case, if desired.

Respectfully submitted,



J. Scott Young  
Attorney for Applicants  
Reg. No. 45,582

Date: August 21 2007  
GlaxoSmithKline Inc.  
Five Moore Drive, PO Box 13398  
Research Triangle Park, NC 27709  
(919) 483-8160  
fax: (919) 483-7988  
Scott.S.Young@GSK.com